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IN THE

Supreme Court of the United States

OCTOBER TERM 1965

No. 384

EMMETT J. STEBBINS,
Appellant,

v.

JOHN W. MACY, Jr., Chairman,
Civil Service Commission, *Et al.*,
Appellees.

On Appeal From the United States District Court for the District of Columbia

MEMORANDUM FOR APPELLANT

EMMETT J. STEBBINS
6025 Clay Street, N.E.
Washington, D.C. 20019
Appellant, Pro Se

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MEMORANDUM FOR APPELLANT FOR JURISDICTIONAL BASIS FOR APPEAL

The Constitution gives the Supreme Court appellate jurisdiction "with such Exceptions, and under such Regulations as the Congress shall make" over all cases within the judicial power of the United States originating in State or lower Federal courts (U.S. Const., art. III, sec. 2).[1] This Court has used language in its opinions suggesting that by virtue of the Exceptions and reg-

[1] See Congressional Power Over the Appellate Jurisdiction of the Supreme Court, by Leonard G. Ratner, 109 U. Pa. L. Rev. 157 (1960).

ulations clause its appellate jurisdiction is subject to unlimited Congressional control (3 U.S. (3 Dall.) 321 (1796); 8 U.S. (4 Cranch) 75 (1807); 70 U.S. (3 Wall.) 250 (1865); 46 U.S. (5 How.) 103 (1847); 148 U.S. 372 (1893). This language has generally been regarded as establishing that Congress has such power.[2]

Constitutional authority to create and abolish inferior Federal courts gives Congress plenary control over their jurisdiction, *Lockerty v. Phillips*, 319 U.S. 182 (1943); *Lauf v. E. G. Shinner & Co.*, 303 U.S. 323 (1938); *Sheldon v. Silk*, 49 U.S. (8 How.) 441 (1850).

On August 24, 1937, Public Law 352, 50 Stat. 751, was enacted and approved by the United States Congress. That Act provided among other things for direct appeals to the Supreme Court of the United States, and regulation of the issuance of injunctions, in certain cases involving the constitutionality of Acts of Congress, and for other purposes. Section three of that Act provides in part:

> *Section 3.*
> No interlocutory or permanent injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any Act of Congress upon the ground that such Act or any part thereof is repugnant to the Constitution of the United States shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges * * *.

In 1948 when Congress revised the Judicial Code, Public Law 352, 50 Stat. 751 was redesignated as section

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[2] See Burdick, The Law of the American Constitution 99 (1922); Roberts, Now Is the Time: Fortifying the Supreme Court's Independence, 35 A.B.A.J. 1, 3-4 (1949); Tweed, Provisions of the Constitution Concerning the Supreme Court of the United States, 31 B.U.L. Rev. 1 (1951).

2284, Title 28, United States Code,[3] 7 Moore's Federal Practice, page 1678, Note 4. The procedural provisions of the Act of 1937 dealing with the issuance of temporary restraining orders and interlocutory and final injunctions were included in revised 28 U.S.C., section 2284 (1948), which, however, has been broadened to apply to all three-judge court cases.

The severability clause of the Veterans' Preference Act of 1944 seems to suggest that the court below and this Court have jurisdiction to determine the constitutionality of the Act:

> *Section 21.*
> If any part of this Act shall be found to be unconstitutional, the rest of it shall be considered as in full force and effect.

For the foregoing reasons, it is respectfully submitted that probable jurisdiction should be noted and the appeal allowed.

EMMETT J. STEBBINS
Appellant, Pro Se

September 1965

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[3] This reference to 28 U.S.C., section 2284 was substituted by the 1948 amendments for "The Act of August 24, 1937, c. 754, section 3 [50 Stat. 752, 28 U.S.C., section 380(a) (1940)], relating to actions to enjoin the enforcement of acts of Congress."